

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PRINCE FRANKLIN TSETSE,

Plaintiff,

v.

OAKLAND POLICE DEPARTMENT,
et al.,

Defendants.

Case No. [15-cv-01909-DMR](#) (PR)

**ORDER OF DISMISSAL WITHOUT
PREJUDICE**

Plaintiff Prince Franklin Tsetse, who is currently in custody at the Santa Rita Jail, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983. Dkt. 1. Plaintiff has consented to magistrate judge jurisdiction in this matter. Dkt. 1 at 4.

On October 5, 2015, the court issued an Order Dismissing Complaint With Leave To Amend. Specifically, the court granted Plaintiff twenty-eight days from the date of that Order to file an amended complaint correcting the deficiencies of his claims. Plaintiff was warned that the failure to timely file an amended complaint would result in the dismissal of this action for failure to prosecute. The time for Plaintiff to file his amended complaint has passed, and no amended complaint has been filed. Taking into account the salient factors set forth in *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992), the court finds that dismissal is warranted under Federal Rule of Civil Procedure 41(b).¹ See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 989, 992 (9th Cir. 1999) (affirming dismissal of action following plaintiff's failure to amend complaint after

¹ If and when Plaintiff is prepared to pursue his claims, he may file a new civil rights action. The limitations period to file a section 1983 action in California is two years, but it is tolled for up to two years during a continuous period of incarceration. See *Silva v. Crain*, 169 F.3d 608, 610 (9th Cir. 1999) (holding, pursuant to Cal. Civ. Proc. Code § 340(3), that the limitations period for filing a section 1983 action in California is one year); S.B. 688 (amending Cal. Civ. Proc. Code § 340(3) and adding section 335.1 to establish two-year residual limitations period for personal injury actions); Cal. Civ. Proc. Code § 352.1(a) (providing for an additional two years of tolling during a period of continual imprisonment).

1 receiving leave to do so, where the interest in expeditious resolution of litigation, the court's
2 management of its docket, and avoiding prejudice to defendants favored dismissal).

3 Accordingly, IT IS HEREBY ORDERED that the complaint in the above-captioned action
4 is DISMISSED WITHOUT PREJUDICE. The Clerk of the Court shall enter judgment, terminate
5 all pending motions and close the file.²

6 IT IS SO ORDERED.

7 Dated: November 12, 2015



8 DONNA M. RYU
9 United States Magistrate Judge

United States District Court
Northern District of California

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26 ² As mentioned above, Plaintiff has consented to magistrate judge jurisdiction. The
27 undersigned Magistrate Judge, then, has jurisdiction to dismiss this action, even though
28 Defendants have not served or consented to magistrate jurisdiction. *See Neals v. Norwood*, 59
F.3d 530, 532 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss prison
inmate's action under 42 U.S.C. § 1983 as frivolous without consent of defendants because
defendants had not been served yet and therefore were not parties).

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 12, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Prince Franklin Tsetse ID: PFN BKB 201
Santa Rita Jail
5325 Broder Blvd
Dublin, CA 94568

Dated: November 12, 2015

Susan Y. Soong
Clerk, United States District Court

By: 
Ivy Lerma Garcia, Deputy Clerk to the
Honorable DONNA M. RYU